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Estate Tax

DOR Directive 95-1

Massachusetts
Department of
Revenue

The Massachusetts Unlimited Marital Deduction

Introduction:

Effective for estates of decedents dying on or after July 1, 1994, the Massachusetts estate tax was amended to allow an unlimited marital deduction. From January 1, 1976 through June 30, 1994, the maximum allowable Massachusetts marital deduction was limited to 50% of the Massachusetts adjusted gross estate.

Issue:

Where a decedent's will or trust instrument, executed prior to July 1, 1994, provides for a bequest of the "maximum amount allowable for the Massachusetts marital deduction" (or any such similar language), does that provision refer to the Massachusetts marital deduction in effect on the date of execution of the will or trust instrument or to the marital deduction in effect at the date of death?

Directive:

For estates of decedents dying on or after July 1, 1994, a reference to the "maximum amount allowable for the Massachusetts marital deduction" (or any such similar language) in a decedent's will or trust instrument executed prior to July 1, 1994, is construed as the maximum allowable Massachusetts marital deduction provided under Massachusetts estate tax law in effect on the decedent's date of death, unless the decedent's will or trust instrument clearly indicates a contrary intent.

Discussion Of Law:

The Massachusetts estate tax is a transfer tax imposed on the value of all property in the estate of a decedent at the date of death. Thus, the applicable law is generally determined by the decedent's date of death. G.L. c. 65C, § 5.

For decedents dying on or after July 1, 1994, an unlimited Massachusetts marital deduction is available. G.L. c. 65C, § 3. A bequest by a decedent to a spouse of the maximum amount

allowable for the Massachusetts marital deduction can therefore result in the entire estate passing to a surviving spouse without incurring Massachusetts estate tax. When the limitation on the Massachusetts marital deduction was removed by the legislature, no transitional rules for wills or trusts executed prior to this change in the law were enacted.¹ However, the Supreme Judicial Court has recognized that "[t]he fundamental object in the construction of a will is to ascertain the testator's intention from the whole instrument, attributing due weight to all its language, considered in light of the circumstances known to the testator at the time of its execution, and to give effect to that intent unless some positive rule of law forbids." *Putnam v. Putnam*, 316 N.E.2d 733 (1974).

Thus, where it is clear from the instrument that the testator did not intend the bequest to the surviving spouse to be increased by changes in the Massachusetts estate tax law subsequent to the date the instrument was executed, a reference to the maximum amount allowable for the Massachusetts marital deduction will be construed in accordance with the decedent's intent. However, in all other cases where the will or instrument expresses no intent to the contrary, a reference to the maximum allowable Massachusetts marital deduction will be construed as the maximum allowable Massachusetts marital deduction in effect as of the decedent's date of death. In most cases, this will result in a reduction in Massachusetts estate tax due from the estate.

Mitchell Adams
Commissioner of Revenue
January 24, 1995

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1. Compare Section 403(e)(3) of the Economic Recovery Tax Act of 1981 for the transitional rule applicable when the limitation on the federal estate tax marital deduction was removed.